



**Nursing Homes Limited t/a Parkroad Nursing Homes v Nairobi North Healthcare Limited
(Tribunal Case E852 of 2023) [2024] KEBPRT 1627 (KLR) (29 October 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1627 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E852 OF 2023
CN MUGAMBI, CHAIR
OCTOBER 29, 2024**

BETWEEN

NURSING HOMES LIMITED T/A PARKROAD NURSING HOMES ... TENANT

AND

NAIROBI NORTH HEALTHCARE LIMITED LANDLORD

RULING

Introduction

1. The Tenants Application dated 7.8.2023 seeks an order that the Respondent be enjoined from in any manner interfering with the Applicant's tenancy on Land Parcel No. LR No. NAIROBI/BLOCK 40/497 (formerly 209/3530/8 NAIROBI).

The Tenant's depositions

2. The Tenant's affidavit in support of its Application sworn by Mr. PRAVIN JIVANLAL PATEL on 7.8.2024 may be summarized as follows;-
 - a. That the Tribunal has already declared the tenancy between the parties herein to be a controlled tenancy.
 - b. That in an earlier dispute between the Tenant herein and the earlier registered proprietor of the suit premises in BPRT Case No. 785 of 2009, the Tribunal determined the monthly rent for the premises to be Kshs. 20,000/=, and the Tribunal further permitted the Tenant to recoup its construction costs from future rental obligations.
 - c. That the Tenant has continued to develop the suit premises and has been therein uninterrupted for a period of over forty years.
 - d. That the Tenant is not in any rent arrears.



- e. That the parties to this dispute are also before the High Court in ELCOS 010/2023, ELC Division, where both parties are claiming ownership of the suit property; in the said suit, the High court has made an order for the maintenance of the status quo.
- f. That by purporting to levy distress, the Respondent is prematurely asserting its proprietorship to the disputed property.
- g. That the Respondent is a stranger to the Tenant and its claim to the proprietorship of the suit premises has already been challenged in the ELC court.
- h. That the Tribunal has the mandate to deal with the issue of rent between the parties.
- i. That the rent demand by the Respondent has been made without following the laid down procedure as the goods proclaimed are exempted from attachment.

The Respondent's depositions

- 3. The Respondent's replying affidavit sworn by Ms. Maina Chege, the Respondent's managing director may be summarized as follows;-
 - a. That the Applicant's tenancy over the suit premises is not disputed but for continued occupancy of the premises, the Tenant has to pay rent.
 - b. That the Tenant is in rent arrears amounting to Kshs. 280,000/= as at July 2024.
 - c. That the Tribunal has not by its Ruling of 9.11.2023, prohibited the levying of distress.
 - d. That the Tribunal did not also refute the Respondent's ownership of the suit premises.
 - e. That the Respondent's levy of distress for rent against the Tenant is lawful and a recognized process to recover unpaid rent.
 - f. That the Applicant has not made any efforts to clear the rent arrears while it still continues to occupy the suit premises.

Analysis and determination

- 4. Both parties have filed their submissions and I will consider the same in this Ruling. The issues that arise for determination in this Application are in my view the following;-
 - A: What is the import of the Ruling in ELC (OS) No. E010 of 2023 (Nairobi) to the circumstances of this case?
 - B: Whether the Tenant is entitled to the orders sought?

Issue A: What is the import of the Ruling in ELC (OS) No. e010 of 2023 (Nairobi) to the circumstances of this case?

- 5. By its Ruling of 9.11.2023, the Tribunal made the following orders;-
 - a. That the tenancy between the parties herein is a controlled tenancy governed by the provisions of Cap 301 of the Laws of Kenya.
 - b. That this suit is not Res judicata BPRT Case No. 785 of 2009.



- c. That the Respondent's letter of 30.8.2023 is not and does not amount to the notice to terminate or alter terms of tenancy as contemplated under Section 4(1) and 4(2) of Cap 301 and is therefore null and of no consequence.
 - d. That the Respondent is hereby enjoined from allegedly interfering with the Tenant's occupation, use and possession of the suit premises comprised in LR No. Nairobi/Block 40/497 (formerly 209/3530/8 (Nairobi).
 - e. That the Respondent is further and specifically prohibited from arbitrarily increasing the rent payable for the suit premises without following the procedure laid down under Cap 301 of the Laws of Kenya.
 - f. That the Landlord will bear the costs of this Application.
6. On 20.12.2023, the Environment & Land Court in ELC (OS) No. E010 of 2023 (Nairobi) made the following orders;
- a. Nairobi North Health Care Limited is hereby joined as a 2nd Defendant/Respondent in this suit.
 - b. Parties shall maintain the prevailing status quo in respect of the suit property at the time of this Ruling. In particular, the plaintiff shall retain possession and occupation of LR No. 209/3530/8 (I.R. No. 7702/8) commonly known as Park Road Nursing Home pending the hearing and determination of this suit.
 - c. The 2nd Defendant/Respondent is hereby granted fifteen (15) days (excluding the Christmas vacation) to file its responses to the amended Originating Summons.
 - d. The plaintiff is granted corresponding leave to file a response to the 2nd Defendant's reply in fifteen (15) days upon service, if need be.
 - e. Costs of the Application be in the cause.
7. It is important to note that the Ruling and orders of the Tribunal in this case were issued on 9.11.2023 pursuant to an Application made on 1.9.2023 while the High court orders were issued on 20.12.2023 pursuant to an Application dated 25.9.2023. When the Tribunal made the orders of 9.11.2023, it therefore did not have the benefits of the Judge's orders of 20.12.2023.
8. It is also clear that in both the ELC and the BPRT, the subject matter of the litigation is the same. As things stand, the Landlord/Respondent herein has already been made a party to the dispute before the ELC court and the dispute is pending before the said court. part of the dispute in that court is the contestation as to who is the legal proprietor of the suit premises.
9. The Environment & Land court has already issued directions on what is to happen to the suit premises pending the hearing and determination of the suit by way of Originating Summons already before it. The orders of the ELC court are well set out under paragraph 6 of this Ruling and it is clear that the said court did not make any directions as to the payment of rent.



10. I do note that the court at paragraph 34 of its Ruling rooted for the preservation of the suit property. At the said paragraph, the court stated;

“In this matter, considering the affidavit evidence adduced by the parties and the circumstances of the case, this court is of the view that it is in the interest of justice that the suit property be preserved.”

In the obtaining scenario, it is the finding of this court that a status quo order is merited to preserve the suit property.

11. In the circumstances of the express orders given by the Learned Judge which orders were made to preserve the status quo, I do not think it is open to the Tribunal to give its interpretation as to what the Learned Judge interpreted the status quo to be. The question of whether rent is payable and by whom is one that ought to be placed before the Judge in the ELC case so that it can be determined whether any such payment forms part of the status quo the Judge ordered to be maintained.
12. Faced with the orders of the Environment & Land Court, as presented in the instant Application, what is the Tribunal to do?
13. In the cases of; Mohamed Abushiri Mukullu vs Minister for Lands & Settlement & 6 Others [2015] eKLR, the court stated;

“The principle of stare decisis requires that although not bound to do so, the court should follow the decision of a Judge of equal jurisdiction unless the decision appears to be clearly wrong. In its vertical application, a court is bound by the decisions of a court superior to it. Horizontally, while it may be desired for the sake of certainty and consistency that the court does not deviate from decisions of the courts of the same rank, decisions by courts of concurrent jurisdiction are only of persuasive nature and cannot bind the court.”

14. In the case of; Ferdinand Ndung’u Waititu vs Independent Electoral Boundaries Commission (IEBC) & Eight Others [2014] eKLR, the court held;

“...It is incumbent on lower courts to adopt and follow the principles set out by higher courts unless there are good reasons to depart.”

15. In *Kinyanjui & 5 Others vs Kalunga & 12 Others* [2024] KECA 317 (KLR), the court stated;

“In addition to the benchmarked decisions to which this court adverted in *Wanjiki vs Kariuki* (supra) regarding the importance of the doctrine of stare decisis, we would echo the dictum in *Housen vs Nikoaisen* [2002] 2 SCR:

“It is fundamental to the administration of justice that the authority of decisions be scrupulously respected by all courts upon which they are binding. Without this uniform and consistent adherence, the administration of justice becomes disordered, the law becomes uncertain and the confidence of the public in it undermined. Nothing is more important than that the law as pronounced... should be accepted and applied as our tradition requires; and even at the risk of that fallibility to which all Judges are liable, we must maintain the complete integrity of relationships between the courts.”



16. The parties to this suit are therefore bound by the orders issued by the Environment & Land court in ELC (OS) No. 010 of 2023 on 20.12.2023 and those orders supersedes all orders issued in this matter. If the parties need any clarification on any aspect of the orders issued by the Learned Judge, then any such clarification can only be sought from that court.

B: Whether the Tenant is entitled to the orders sought?

17. The Tenant already has orders in its favour issued by the Environment & Land Court in ELC (OS) No. 010/2023 on 20.12.2023. Those orders are in force pending the hearing and determination of the ELC case. A restatement of the said orders would be an unnecessary duplication as all the Tenant needs to do is to enforce the orders from the Environment & Land Court case. I therefore do not find any merits in the Application and the same is dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 29TH DAY OF OCTOBER, 2024.

HON. CYPRIAN MUGAMBI

CHAIPERSON

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Mr. Kibanya for the Landlord and Mr. Mutuku for the Tenant

